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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Board of Housing and Community Development |
| Virginia Administrative Code (VAC) citation | 13 VAC 5-63 |
| Regulation title | Virginia Uniform Statewide Building Code |
| Action title | Promulgate new USBC to update to 2003 ICC and repeal existing USBC |
| Document preparation date | April 6, 2004 |

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#excreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The regulatory action is to update the regulation to incorporate by reference the newest available nationally recognized model building codes and standards produced by the International Code Council (ICC). Because ICC has now produced a rehabilitation code, the existing regulation has to be extensively reformatted to incorporate this new rehabilitation code. Therefore, as filed with the Code Commission, the regulatory action is to repeal the existing regulation and to promulgate a new regulation, however, the only substantive change is the incorporation of the newest ICC codes.

Public input is important to the development of regulations to meet Virginia's needs. Therefore, the Board is expanding the public comment period in order for the public to see and respond to comment received during the comment period. The Board of Housing and Community Development will use the following procedure to develop proposed regulations and to receive public input:

1. Staff will draft a base document for each regulation under consideration. The purpose of the base document is to make those changes necessary to the regulation to (i) correct unclear or grammatically incorrect language, (ii) correlate the existing regulation with a newer edition of a model code, (iii) make changes necessary to comport with state law and (iv) reformat or change the arrangement of the regulation, as needed.
2. Staff also will identify major differences between the editions of the model codes used in the current regulations and the editions of the new model codes being considered. Also, any issues or items that the Board has specifically asked to be considered for the proposed regulation and any code changes that are legislatively mandated will be included in the base documents .
3. Steps 1 and 2 above will provide the basis for developing a proposed regulation. Once a proposed regulation is adopted by the Board and published, a 60-day public comment period (the first comment period) will be initiated. After the first comment period closes, staff will review all comments and prepare evaluations on each proposal submitted. A package containing all public comment and staff evaluations will be prepared and disseminated to the client groups for review.
4. An additional 30-day public comment period (the second comment period) will be advertised for the submittal of responses to the staff packages from the first comment period. A public hearing will be held during this second comment period. After the second comment period, staff will prepare a package containing all public comment and the staff evaluations for the Board.
5. Depending upon the nature and extent of comment received, instead of developing a final regulation immediately, the Board may elect to publish a revised proposed regulation (re-proposed) containing all changes to the original proposed regulation. There will be a 30 day public comment period for any re-proposed regulation.
6. Following the public comment period on the re-proposed regulation, the Board's Codes and Standards Committee will develop recommendations for the Board for final regulations.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The statutory authority to update the regulation is contained in § 36-98 of the Code of Virginia. The promulgating agency is the Board of Housing and Community Development. State law requires the Board to keep the regulation up to date.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Virginia Uniform Statewide Building Code (the “USBC”) has historically been based on nationally recognized model building codes and standards as directed by § 36-99 of the Code of Virginia. The former three model code organizations in the U.S. have merged into one organization called the International Code Council, or ICC. ICC produces a full set of model building codes and standards every three years. The first set was known as the 2000 edition. The 2003 edition has now been approved and is available. Consequently, they are to be considered now for incorporation into the USBC. The specific reason for the action being essential to protect the health, safety or welfare of Virginia’s citizens is that when new nationally recognized codes and standards become available, they are considered to be the latest consensus of all affected groups and persons for providing safe buildings and structures at the least possible cost and therefore should be incorporated into the USBC when available. Potential issues to be addressed during the updating of the USBC are generally determined by individuals and the client groups who review the newest ICC codes and submit comments where appropriate.

The major changes from the 2000 model codes to the 2003 model codes are as follows:

1. Habitable rooms above private garages will be required to have installed 5/8-inch Type X gypsum board on the garage ceiling instead of ½-inch gypsum board. This will provide greater safety for occupants to egress during an emergency and provide additional property protection to contain the fire to the garage area until the arrival of emergency responders. This has a minimal construction cost increase for builders.
2. Fire-retardant-treated wood could now be utilized in non-combustible building construction in limited applications for architectural trim, roof construction, non-bearing partitions and exterior walls of 2-hours or less fire resistance rated construction. Modest construction savings would result from being able to use this less costly material. It would also provide for a steady supply of construction materials, where other non-combustible materials were unavailable in a timely manner.
3. Swimming pools will now be required to be constructed with anti-suction entrapment avoidance features that would significantly reduce the chances and hazard of drowning and evisceration by pool suction devices. The anticipated reduction in drownings and injuries of this life safety measure easily offsets modest cost increases to install this protection feature.
4. The exterior wall fire-resistance ratings required for courtyard walls has been eliminated thereby reducing slightly construction costs without increasing or endangering the occupants or the protection from fire for adjacent properties.

5. A new product called “putty pads” is approved for outlet boxes in fire rated assemblies that is a less expensive means to provide the required fire rating around the outlet boxes.

6. The accessibility standards and requirements for entrances, platform lifts, correctional facilities and assembly seating have been made to comport with new U.S. Architectural and Compliance Board-ADAAG guidelines that were published in the January 2004 Federal Register. Persons with disabilities will have greater access into public buildings and at their places of work. Owners and design professionals will have additional flexibility by being able to use platform lifts in more places.

7. A new consensus standard has been incorporated into the building code for the construction of bleachers and grandstands to minimize the collapse of bleachers and grandstands. The cost impact is minimal.

8. Wired glass will no longer be allowed in educational buildings, gymnasiums and play areas. Tempered glass will now be required to reduce the number and type of serious injuries that have resulted from persons breaking wired glass.

9. New standards for above-ground fuel tanks will allow their installation in dense urban areas on smaller parcels. These new above-ground tanks are designed and constructed so that additional protection and containment features now required in the codes are unnecessary. This provides fuel station operators another viable option when they replace existing underground tanks or wants to operate in dense urban areas.

10. National Electric Code: The use of romex cable will now be allowed in residential buildings 4 stories or less. The USBC has allowed the use of romex cable for years and the NEC will now mirror what has been done in Virginia.

The 2003 ICC model codes under consideration are available to be seen at the Department of Housing and Community Development, 501 North Second Street, Richmond, Virginia during regular office hours (call 804-371-7160). These codes are also available in some public libraries.

Information on ICC and its model codes is available online at <http://www.iccsafe.org/>

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no viable alternatives that the Department is aware of which would accomplish the purpose of the action.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The Department is not aware of any potential impact of this action on the institution of the family or on family stability.